

## **ANALYSIS**

This ordinance amends the countywide water pipeline franchise granted to California Water Service Company ("Franchisee"), by Ordinance No. 87-0187F, to reflect a merger between Franchisee and Dominguez Services Corporation, the parent corporation of Antelope Valley Water Company ("Antelope"), and to update the terms and conditions of the franchise. The ordinance is being adopted in conjunction with the County's consent to the transfer of franchise rights granted to Antelope, by Ordinance No. 82-0227F, to Franchisee and the repeal of Ordinance No. 82-0227F.

LLOYD W. PELLMAN  
County Counsel

By  
LILLIAN D. SALINGER  
Senior Deputy County Counsel  
Public Works Division

LDS:jn

03/31/03 (requested)

05/07/03 (revised)

**ORDINANCE NO. \_\_\_\_\_**

An ordinance amending the countywide water pipeline franchise granted to California Water Service Company ("Franchisee"), by Ordinance No. 87-0187F, to reflect a merger between Franchisee and Dominguez Services Corporation, the parent corporation of Antelope Valley Water Company ("Antelope"), and updating the terms and conditions of the franchise. The ordinance is being adopted in conjunction with the County's consent to the transfer of franchise rights granted to Antelope, by Ordinance No. 82-0227F, to Franchisee and the repeal of Ordinance No. 82-0227F.

The Board of Supervisors of the County of Los Angeles ordains as follows:

**SECTION 1.** Section 1 of Ordinance No. 87-0187F is hereby amended to read as follows:

Section 1. A. The right, privilege, and franchise is granted to California Water Service Company ("Franchisee"), and its successors and assigns, ~~to lay or construct from time to time and for the period of twenty-five (25) years, from January 1, 1988, to lay, construct, reconstruct, maintain, operate, renew, repair, renew,~~ change the size of, remove, or abandon in place pipes and pipelines for the transportation of water, waste water, mud, and other liquid substances, including those substances that are generally accepted as appropriate for the treatment of water, excluding all other hazardous substances or hazardous waste within the meaning of the "Comprehensive Environmental Response Compensation and Liability Act of 1980," 42 U.S.C. 9601

et seq., as it may hereafter be amended; the "Federal Water Pollution Control Act," 33 U.S.C. 1251 et seq., as it may hereafter be amended; and the "Solid Waste Disposal Act," 42 U.S.C. 6901 et seq., as it may hereafter be amended, (provided, however, that this exclusion shall not apply to substances that are generally accepted as appropriate for the treatment of water), together with all manholes, valves, appurtenances, and service connections necessary or ~~convenient~~appropriate for the operation of said pipes or pipelines, including poles, conduits, wires, cables, or other appurtenances and equipment for telegraph or telephone lines or both necessary or ~~convenient~~appropriate for the Franchisee's business, in, under, along, or across any and all highways now or hereafter dedicated to public use in the unincorporated territory of the County of Los Angeles ("County"), State of California.

B. The scope of the franchise shall not be expanded without the prior approval of the Los Angeles County Board of Supervisors ("Board").

**SECTION 2.** Section 2 of Ordinance No. 87-0187F is hereby amended to read as follows:

Section 2. As consideration for the franchise granted, the Franchisee shall pay ~~to the County~~annually, within three (3) months and fifteen (15) days after the end of each calendar year, during the life of the franchise, to the County in lawful money of the United States the following:

~~aA.~~ Two percent (2%) of the gross annual receipts of the Franchisee arising from the use, operation, or possession of the franchise; provided, however, that such

payment shall in no event be less than one percent (1%) of the gross annual receipts of the Franchisee derived from the sale within the franchise area of the commodity or service for which the franchise is awarded. Such percentage shall be paid annually during the life of the franchise, including the year of granting of the franchise. In the event this amount is increased by federal or state law or the County is empowered to increase the rate, the County reserves the right to increase the rate to the maximum amount permitted by federal, state, or local law.

~~6B.~~ In addition to the foregoing annual payments, the Franchisee shall also pay:

1. ~~Pay~~The County Department of Pubic Works within sixty (60) days after the end of each calendar year, for each year of the life of the franchise, an initial construction charge calculated at a rate of One Hundred Dollars (\$100.00) per mile or fraction thereof for all new mains laid during the ~~life of the franchise~~preceding calendar year.

2. ~~Pay~~The County Auditor-Controller, within sixty (60) days after the end of each calendar year, for each year of ~~during the life of the franchise,~~ an annual fee of ~~Twenty-Five Dollars (\$25.00) per pole mile or portion thereof, and Twenty-Five Dollars (\$25.00) per mile or portion thereof~~ for aerial or above ground lines or underground conduit for wires, cables, telephone or telegraph lines maintained under the franchise. ~~Said fee shall be due within sixty (60) days after the end of each calendar year.~~

C. The County reserves the right to change its fees at five-year intervals from the effective date of this franchise, if the Board determines, after a public hearing, that good cause exists for such change and such action is not in conflict with the laws of the State of California.

D. The Franchisee shall also pay any application, administrative, and processing fees required in connection with this franchise. These fees may be charged at the then-current applicable rates.

**SECTION 3.** Section 3 of Ordinance No. 87-0187F is hereby amended to read as follows:

Section 3. The Franchisee ~~will~~shall during the life of the franchise:

aA. File with the County Auditor-Controller and the Chief Administrative Officer ("CAO"), Director of Real Estate, within three (3) months and fifteen (15) days after the ~~expiration~~end of the~~each~~ calendar year, or fractional calendar year ("franchise report period"), following the ~~date of the granting~~effective date of the franchise, ~~and within three (3) months after the expiration of each calendar year thereafter, two (2) copies~~ one (1) copy to each of a report verified ~~by the~~under oath ~~of~~by either the Franchisee or ~~by the~~ ~~oath of~~ a duly authorized representative of the Franchisee, showing the total gross receipts of the Franchisee for the immediately preceding franchise ~~payment~~report period, received or accrued in connection with the furnishing of the commodity or service arising from the use or operation of the franchise, together with such additional data as is necessary in the opinion of the County Auditor-Controller to calculate or verify

the calculation of the annual payment required by Section 2-a supra (~~or the prorated amount thereof, for the first period if the first period is less than one year~~).

~~6B.~~ In the report prepared pursuant to 3.A above, Franchisee shall also show any change in franchise footage since the last franchise report~~end of the franchise report period covered by the last franchise report~~, segregating such footage as to new mains lines laid, old mains lines removed, old mains lines abandoned in place, including the internal diameter of such main lines laid, removed, and/or abandoned in place; the footage of new conduit laid for wires, cables, telegraph or telephone lines, old conduit removed, old conduit abandoned in place; and the diameter of such conduits laid, removed, and/or abandoned in place; and the footage and internal diameter of mains lines in territory annexed or incorporated since the last franchise during the same time period.

~~6C.~~ File with the Director, of the County Department of Public Works, within the same franchise report period as provided in Section 3-a supra, sixty (60) days after the end of each franchise report period, a report, in duplicate, showing the permit number of each permit obtained for the installation of new mains lines and conduits during ~~the immediately preceding~~ that franchise report period, together with the length and size of said mains lines and conduits.

**SECTION 4.** Section 4 of Ordinance No. 87-0187F is hereby deleted in its entirety and replaced with the following:

~~Section 4. The Franchisee during the life of the franchise shall make annual~~

~~payments to the County, as provided in Section 2-a and 2-b within fifteen (15) days after the filing of the report required by Section 3-a. In the event the amount paid is incorrect in the judgment of the Board, it may order the payment of such additional sum or sums as it may find thereunder and if not paid, or if paid under protest, the share may be determined by suit.~~

Section 4. A. In the event Franchisee fails to make any of the payments provided for herein on or before the dates they are due, the Franchisee shall pay a late charge of ten percent (10%) of the amount due, said ten percent (10%) being due on the sixty-first (61st) day after the due date. The ten percent (10%) has been set by both parties hereto in recognition of the difficulty in affixing actual damages from a breach of said time of performance requirements.

B. In the event full payment of any rate, payment, or fee, including the ten percent (10%) late charge, is not received within ninety (90) days after the due date, interest shall accrue on the unpaid balance at one percent (1%) per month beginning on the ninety-first (91st) day after the due date.

**SECTION 5.** Section 5 of Ordinance No. 87-0187F is hereby deleted in its entirety and replaced with the following:

~~Section 5. In addition to the terms and conditions herein, the franchise is granted under the same terms and conditions contained in Title 16, Division 3A, Chapter 16.54, of the Los Angeles County Code: "The Pipeline Franchise Ordinance, Part 2," as codified and adopted September 24, 1981, herein called "Ordinance".~~

~~In the event the terms and conditions hereof conflict with the terms and conditions of said Ordinance, the terms and conditions hereof shall control.~~

Section 5. The Franchisee shall meet the following indemnification, insurance, and bonding requirements:

A. Franchisee shall indemnify, defend, and hold harmless the County and its special districts, elected and appointed officers, employees, and agents ("County's agents") from and against any and all liability and expense, including claims and lawsuits for injuries or damages of any nature whatsoever, defense costs, legal fees, and workers' compensation benefits, arising from or relating to: (1) Franchisee's operations or the services provided by Franchisee, its employees, agents, servants, receivers, successors, or assignees ("Franchisee's agents") in connection with this franchise; and/or (2) the acts or omissions of Franchisee, Franchisee's agents, or any person in connection with activities or work conducted or performed pursuant to this franchise and arising out of such activities or work. Franchisee shall also indemnify, defend, and hold harmless the County and the County's agents from and against any and all pollution liability, contamination, hazardous substance, or environmental degradation liability, including any and all expenses, claims, and lawsuits for injuries or damages of any nature whatsoever, defense costs, legal fees, and workers' compensation benefits, arising from or relating to any threatened, actual, or alleged discharge, dispersal, release, or escape of any substance into or upon any person, thing, or place, including the land, soil, atmosphere, man-made structure, and/or any

above or below ground watercourse or body of water, in connection with this franchise.  
The Franchisee shall not be obligated to indemnify for liability and expense arising from  
the active negligence of the County.

B. The County shall be immediately notified by Franchisee of all discharge,  
release, or escape of any water, waste water, mud, or other substances from  
Franchisee's pipeline. All actions to investigate, remove, or remediate any substance  
reasonably demonstrated to be discharged, dispersed, released, or escaped from  
Franchisee's pipeline, and to repair or restore Franchisee's pipelines and  
appurtenances, shall be the sole responsibility of Franchisee and shall be conducted by  
Franchisee or its employees, agents, contractors, subcontractors, or suppliers in  
conformance with any and all applicable laws, ordinances, rules, regulations,  
requirements, and orders whatsoever, present or future, of the federal, state, County, or  
other local government at Franchisee's sole cost and expense. If Franchisee fails to  
take any action required pursuant to this section, County may, but shall not be obligated  
to, take all actions it deems appropriate with respect to the related substance at  
Franchisee's expense. Upon written demand by County, Franchisee shall reimburse  
County for all County expenses reasonably incurred in connection with County's above-  
described actions including, but not limited to, all direct and indirect costs relating to  
investigation, remediation, and removal.

C. Without limiting Franchisee's indemnification of County, Franchisee shall  
provide and maintain at its own expense, during the term of this franchise, the following

programs of insurance. Such programs and evidence of insurance shall be satisfactory to the County and shall be primary to and not contributing with any other insurance maintained by the County. Certificate(s), or other evidence of coverage, including certified copies of additional insured endorsement(s) and notice of cancellation endorsement(s), shall be delivered to the Chief Administrative Office, Real Estate Division, Attn: Franchise Section, 222 South Hill Street, 3<sup>rd</sup> Floor, Los Angeles, California 90012. Such certified copies, certificate(s), or other evidence of coverage shall specifically identify this franchise and shall contain the express condition that the County is to be given written notice by registered mail at least thirty (30) days in advance of any modification, non-renewal, or cancellation of any program of insurance.

1. Liability: Such insurance shall be endorsed naming the County and the County's agents as additional insureds, and shall include:

(a) Commercial General Liability insurance written on a commercial general liability form or on a comprehensive general liability form covering the hazards of premises/operations, owner's and contractor's protective insurance (during construction), fire legal liability coverage, and contractual, independent contractors, pollution liability, explosion, collapse, underground damage, advertising, products/completed operations, broad form property damage, and personal injury with a combined single limit of not less than Five Million Dollars (\$5,000,000) per occurrence.

(i) If written with an annual aggregate limit, the policy limit should be three (3) times the above-required occurrence limit.

(ii) If written on a claims made form, such insurance shall be endorsed to provide an extended reporting period of not less than two (2) years following termination or cancellation of this franchise.

(b) Comprehensive Auto Liability insurance endorsed for all owned, non-owned, and hired vehicles with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.

2. Workers' Compensation: A program of Workers' Compensation insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California and the Federal U.S. Longshoreman and Harbor Worker Compensation Act, including Employer's Liability with not less than a One Million Dollar (\$1,000,000) limit, covering all persons providing services on behalf of the Franchisee and all persons Franchisee is legally required to cover.

D. Franchisee shall furnish the CAO, at the location specified in subsection 5.C within thirty (30) days of the adoption of this ordinance, either certified copies of the policies required by subsection 5.C or a certificate of insurance for each of said policies executed by the company issuing the policy, certifying that the policy is in force.

E. 1. Within thirty (30) days of the adoption of this ordinance, Franchisee shall provide to the CAO, at the location specified in subsection 5.C, a faithful performance bond in the sum of not less than Fifty Thousand Dollars (\$50,000), payable to the County and executed by a corporate surety acceptable to the County and licensed to

transact business as a surety in the State of California. Such bond shall be conditioned upon the faithful performance by Franchisee of the terms and conditions of the franchise and shall provide that, in case of any breach of any condition of this franchise, the whole bond amount, or any portion thereof reasonably selected by the County, shall be deemed to be forfeited and shall be payable to the County by the principal and sureties of the bond. Throughout the term of this franchise, Franchisee shall maintain the bond in the amount specified herein. Within ten (10) business days after receipt of notice from the County that any amount has been withdrawn from the bond, as provided in this section, Franchisee shall restore the bond to the amount specified herein.

2. The faithful performance bond shall continue in force for one (1) year following the CAO's approval of any sale, transfer, assignment, or other change of ownership of the franchise, or of the expiration or termination of this franchise. The CAO may release said bond prior to the end of the one-(1)-year period upon satisfaction by Franchisee of all the obligations under the franchise.

3. At its sole option, the County may accept Certificates of Deposit, Cash Deposits, or U.S. Government Securities in lieu of commercial bonds to meet the above bonding requirements. Such alternative instruments shall be made payable to the County and shall be deposited with the County's Auditor-Controller and/or Treasurer-Tax Collector, as applicable.

F. The types and amounts of said insurance coverages and bonding shall be subject to review and adjustment by the County, at County's sole discretion, at any time

during the term of the franchise. In the event of such adjustment, Franchisee agrees to obtain said adjusted insurance coverage and bonding, in type(s) and amount(s) as determined by the County, within thirty (30) days after written notice from the County.

G. Failure on the part of Franchisee to procure or maintain the required insurance and bonding shall constitute a material breach of the terms of this franchise upon which the County may immediately terminate or suspend this franchise.

H. It is the obligation of Franchisee to provide evidence of current insurance policies and bonding.

**SECTION 6.** Section 7 is hereby added to Ordinance No. 87-0187F to read as follows:

Section 7. A. Franchisee shall not sell, transfer, assign, lease, hypothecate, place in trust, or change the control of the franchise or any part thereof, except with the prior written consent of the CAO and after payment of a transfer fee as detailed in subsection 7.G. As used in this section, "transfer" includes stock transfer and "control" includes actual working control in whatever manner exercised. Consent shall not be required for involuntary transfers, as provided in Section 16.52.140(B) of the County Master Pipeline Franchise Ordinance.

B. Franchisee shall inform the CAO of any pending sale, transfer, assignment, lease, hypothecation, placing in trust, or change in control, except as excluded in subsection 7.E and shall provide all documents requested by the CAO as set forth in subsection 7.F on which the sale, transfer, assignment, lease,

hypothecation, trust, or change in control is predicated. Upon receipt of preliminary approval from the CAO, Franchisee may proceed to consummate the transaction, subject to the provisions of subsection 7.C.

C. Franchisee shall file with the CAO, within thirty (30) days of the effective date of any sale, transfer, assignment, lease, hypothecation, trust, or change in control, a certified copy of the duly executed instrument(s) which officially evidences such action. After reviewing the final transfer documents, the CAO may administratively approve the transfer of the franchise rights. Consent to any such transfer shall only be refused if the CAO finds that Franchisee is in noncompliance with the terms and conditions of the franchise and/or that the proposed transferee is lacking in experience and/or financial ability to meet the franchise obligations. If such duly executed instrument(s) is not filed with the CAO within the thirty-(30)-day period described above, or if the final documents are different from the preliminary documents, then upon expiration of said thirty (30) days, the CAO may notify Franchisee and the proposed transferee that the transfer is not deemed to be in force and effect. The CAO may then administratively determine that the franchise is forfeited and the Board may, without notice to Franchisee or the proposed transferee, by ordinance, repeal the franchise.

D. As a condition to the granting of consent to such sale, transfer, assignment, lease, hypothecation, placing in trust, or change in control, the Board may impose such additional terms and conditions upon the franchise and upon the proposed transferee which the CAO recommends or the Board deems to be in the public interest.

Such additional terms and conditions shall be expressed by ordinance. Nothing contained herein shall be construed to grant Franchisee the right to sell, transfer, assign, lease, hypothecate, place in trust, or change control of the franchise or any part thereof, except in the manner aforesaid. This section applies to any assignment, whether by operation of law, by voluntary act of Franchisee, or otherwise, except as provided in Section 16.52.140(B) of the County Master Pipeline Franchise Ordinance for involuntary transfers.

E. Notwithstanding the foregoing, shareholders, partners, and/or any other person or entity owning an interest in Franchisee may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein; however, in the event any such sale, transfer, exchange, assignment, divestment, or other change is effected in such a way as to give control of or a twenty-five percent (25%) or more interest in Franchisee to any person or persons, corporation, partnership, or legal entity other than the controlling interest therein on the effective date of the franchise or the effective date of the last assignment, sale, transfer, or other action which required the Board's or CAO's consent, consent thereof shall be required as otherwise provided in this Section 7, which consent shall not be unreasonably withheld.

F. The proposed transferee shall submit an application to the CAO which shall contain, but is not limited to:

1. An identification of the proposed transferee which indicates the corporate or business entity organization, including the submission of copies of the corporate or business formation papers (e.g., articles of incorporation and by-laws, limited partnership agreements, limited liability company operating agreements) and the names and addresses of any parent or subsidiary of the proposed transferee, or any other business entity owning or controlling the proposed transferee in part or in whole.

2. A current financial statement which has been audited by a certified public accountant demonstrating to the satisfaction of the CAO that the proposed transferee has the financial resources necessary to carry out all of the terms and conditions of the franchise. The financial statement shall include a balance sheet, profit and loss statement for at least the three (3) most recent years (if in existence for less than three (3) years, then for such period of existence), and statement of changes in financial position.

3. A copy of the proposed agreement of sale, letter of understanding, or other documentation which details the pending action which will result in a change in control of the Franchisee.

4. Other information which may be required by the CAO to assess the capability of the proposed transferee to operate and maintain the franchise.

G. A transfer fee shall be submitted with the proposed transferee's request for the County's consent to any action described in subsection 7.A and shall be determined as follows:

1. Consent to sale, transfer, transfer of stock, assignment, lease, hypothecation, trust, or change in control or any other action not requiring modification of the franchise by adoption of an amending ordinance: One Thousand Dollars (\$1,000).

2. Consent to sale, transfer, transfer of stock, assignment, lease, hypothecation, trust, or change in control or any other action requiring modification of the franchise by adoption of an amending ordinance: Two Thousand Five Hundred Dollars (\$2,500).

3. In the event the costs to process the proposed transfer application exceed the fees detailed above, the proposed transferee may be required to pay any additional costs incurred by the County in processing the proposed transferee's request for consent to sale, transfer, transfer of stock, assignment, lease, hypothecation, trust, or change in control of the franchise. Such costs may include the costs incurred for hiring consultants to assist in evaluating the application. Such costs shall be paid by the proposed transferee prior to final consideration of the request by the CAO, or the Board, as applicable.

**SECTION 7.** Section 8 is hereby added to Ordinance No. 87-0187F to read as follows:

Section 8. In the event the Franchisee receives notice to relocate its pipelines and appurtenances pursuant to Section 16.52.290 of the County Master Pipeline Franchise Ordinance and Franchisee neglects or fails to relocate its facilities in a timely manner after receipt of any such notice, Franchisee shall be responsible for, and shall reimburse the County, city, or other public entity, any and all additional costs or expenses incurred by the County, city, or other public entity due to, or resulting from, such delay in relocation of the facilities.

**SECTION 8.** Section 9 is hereby added to Ordinance No. 87-0187F to read as follows:

Section 9. In addition to the terms and conditions stated herein, this franchise is granted under all of the terms and conditions contained in the County Master Pipeline Franchise Ordinance, which is incorporated herein by reference, as it may hereafter be amended. In the event the terms and conditions of this franchise conflict with the terms of the County Master Pipeline Franchise Ordinance, the terms and conditions hereof shall control.

[California Water Frn Transfer]